IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appl. No.	: 09/888,899
Appellant(s)	: BRUNING, Gert
Filed	: 25 June 2001
Title	: METHOD AND SYSTEM FOR SELLING LIGHTING SOLUTIONS
TC/A.U.	: 3629
Examiner	: BORISSOV, Igor N.
Atty. Docket	: US 010297

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On: Aug 10, 2006
By: John C Fox

APPELLANT'S REPLY BRIEF

Board of Patent Appeals and Interferences
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Sir:

This Reply Brief of Appellant is in response to the Examiner's Answer dated 13 June 2006, following Appellant's (corrected) Brief dated 21 March 2006.

In response to Appellant's argument that there is no suggestion to combine the teachings of Lys and Yablonowski, the Examiner has stated that Lys teaches installing a lighting system for a customer (or buyer), and Yablonowski teaches charging a customer (or buyer) a usage fee based on measured power consumed by an installed lighting system, and that the motivation for Lys to charge a usage fee would be to generate operating funds. (EX. ANS., page 8, para. 1).

Appellant's Brief contains the statement: '... Lys fails to disclose anything regarding a customer, a buyer of a product or service, or charging a customer.'

This is an overstatement, insofar as Lys does refer to customers in two instances, although in contexts unrelated to charging a customer a usage fee for an installed lighting system.

Thus, Lys states at col. 24, lines 53-56,

> A conventional track lighting system delivers power and provides a mechanical support for light fixtures, which can generally be attached to the "track" at any location along its length by a **customer** without tools.

In this instance, Lys is merely referring to a conventional track lighting system in which the **customer** installs light fixtures on the track.

Also, Lys states at col. 74, lines 53-57,

> The attractive illumination effects of the variable frequency strobe permit improved, dynamic lighting environments in areas where lighting is attractive to **customers**, such as in retail stores, restaurants, museums and the like.

In this instance, Lys is referring to customers of retail stores, etc., where the lighting system is installed, not to customers of the lighting system installed in the stores.

The Examiner has cited col. 7, lines 1-4 of the reference, wherein it is stated that the manner of use of an LED unit includes placing it within an environment, and controlling the amount of current to the unit so as to generate a color within the color spectrum.

However, placing an LED unit in an environment is not the same as installing a lighting system for a customer. An 'environment' could simply mean a bench in a laboratory.

Lys does not, insofar as Appellant can determine, teach or suggest installing a lighting system for a customer. Thus, there is no motivation for the skilled artisan to modify Lys' invention to charge a usage fee based on power savings resulting from the installed system, as taught by Yablonowski. The need to generate operating funds may be a motivation to charge a price or fee, but such a need does not apply to Lys, since Lys does not teach or suggest installing a lighting system, and thus there is no basis on which to charge a price or fee.

Even if the need to generate operating funds could be said to apply to Lys, it is too general a motivation to suggest a usage fee based on power savings.

Moreover, even if the need to generate operating funds could be said to suggest a usage fee based on power savings, it would still not result in Appellant's claimed invention, since Appellant's claims call for a usage fee based on lumens generated or changes in the light spectrum, not power savings.

The Examiner has argued that in order to obtain lumens from a lighting system, current has to be supplied. (EX. ANS., page 8, para. 2). However, this is not the same as charging a fee based lumens.

The Examiner has also argued that Lys establishes a correlation between lumens generated or changes in the lighting spectrum generated and power used for this purpose, citing col. 9, lines 55, 56 of the reference.

However, the passage relied on by the Examiner only

establishes a correlation between the amount of current supplied to an LED and the color or color intensity obtained from the LED, not a correlation between lumens generated and power used for this purpose.

The Examiner has asserted that Appellant is attacking the references individually rather than arguing the failure of the combination of references.

However, in treating a combination of references under Section 103, it is necessary to show that when considering the entire teachings of the cited references, the combination fails to render obvious the claimed subject matter.

It is impossible to discuss the effect of the combined teachings of the references without first considering the teachings of the individual references.

Thus, it has been necessary for Appellant to first show the shortcomings of the individual references, prior to demonstrating that the combination lacks the critical nexus to render the appealed claims obvious under Section 103.

The Examiner has noted that in regard to Appellant's argument that Lys fails to show any measurements to determine the amount of energy used, Yablonowski shows this feature.

However, the Examiner needs to show that Lys, not Yablonowski, shows this feature, in order to establish the required nexus between the references.

Finally, the Examiner states that Lys discloses measurement of changes in lumens generated and changes in light spectrum.

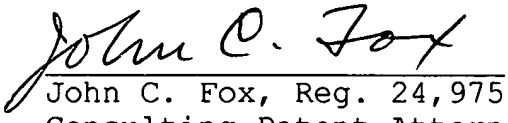
However, Lys fails to measure either of these quantities. Lys merely correlates current changes with changes in color and color intensity.

For all of the above reasons, as well as those

advanced in Appellant's Brief, the combination of Lys and Yablonowski fails to render the appealed claims unpatentable.

In view of the foregoing, Appellant respectfully requests the Board to reverse the rejection of record, and direct the Examiner to allow all of the pending claims, and to otherwise find the application to be in condition for allowance.

Respectfully submitted,



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